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LEASE OF TAMPER

INTERSTATE COMMERCE COMMISSION

LEASE OF TAMPER dated as of May 4, 1972 between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Indiana and Illinois corporation (hereinafter called the "Lessee") and THE NORTHERN TRUST COMPANY, an Illinois banking corporation (hereinafter called the "Lessor"),

W I T N E S S E T H:

WHEREAS, Lessor desires to lease to Lessee and Lessee desires to lease from Lessor one Electromatic Jr. Combination Switch and Production Tamper, which is railroad rolling stock, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and of the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases one Model STA-JF Switch Electromatic Tamper with air hydraulic controls, fully enclosed cab, required to satisfactorily tamp complete switch area and run out to main track, complete with jacking and Junior Foreman Surfacing Device, Lessee's Road Number _____, (hereinafter called the "Tamper"), to Lessee upon the following terms and conditions:

1. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the State of Illinois.
2. Delivery and Acceptance of Tamper. Lessor will cause the Tamper to be delivered to Lessee at Gary, Indiana. Upon such delivery, Lessee will inspect the same and if the Tamper

is found to be acceptable, will accept delivery and will execute and deliver to Lessor a Certificate of Acceptance stating that such Tamper has been inspected and accepted by Lessee on the date of such Certificate of Acceptance and is marked in accordance with Section 5 hereof, whereupon the Tamper shall have been deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to the terms and conditions of this Lease.

3. Rentals. Lessee agrees to pay to Lessor as rental for the Tamper on May 15, 1972 the sum of \$3,150.00 and 19 consecutive quarter-annual payments on August 15, November 15, February 15 and May 15 in each year, commencing August 15, 1972, of the sum of \$3,150.00 each with the final quarter annual payment to be due on February 15, 1977. If for any reason the Tamper is delivered to and accepted by the Lessee pursuant hereto after May 15, 1972, the first rental payment shall be due and payable on the date the Tamper is so delivered and accepted and shall be in an amount equal to \$3,150.00 less 1.111% of \$3,150.00 for each day elapsing between May 15, 1972 and the date the Tamper is so delivered and accepted (beginning May 16, 1972 and ending with the date the Tamper is so delivered and accepted) and the last installment shall be in an amount equal to \$3,150.00 plus the amount by which \$3,150.00 exceeds the first installment as computed above in this sentence. All payments under this Lease shall be made by Lessee to Lessor at 50 South LaSalle Street, Chicago, Illinois 60690.

This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent for any reason, including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor under this Lease or otherwise or against TAMPER, INC.; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of the Tamper from whatsoever cause, the taking or requisition of the Tamper by condemnation or otherwise, the lawful prohibition of Lessee's use of the Tamper, the interference with such use by any private person or corporation, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding; it being the intention of the parties hereto that the rent and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease and Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of the Tamper except in accordance with the express terms hereof.

4. Term of Lease. The term of this Lease shall begin on the date of delivery to and acceptance by Lessee of the Tamper and, subject to the provisions of Sections 7 and 9, shall terminate 3 months after the date on which the final quarter-annual payment of rent in respect thereof is due hereunder, plus the number of days,

if any, elapsing between May 15, 1972 and the date of delivery to and acceptance by Lessee of the Tamper.

5. Identification Marks. Lessee will keep and maintain plainly, permanently and conspicuously marked on each side of the Tamper, in letters no less than 1 inch in height, the words "The Northern Trust Company, Lessor".

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on the Tamper as a designation that might be interpreted as a claim of ownership, provided, however, that Lessee may letter the Tamper with the names or initials or other insignia customarily used by Lessee on equipment used by it of the same or a similar type for convenience of identification of its rights to use the Tamper as permitted under this Lease.

6. Taxes. Lessee will promptly pay all taxes (other than federal, state or local income taxes or franchise taxes measured by net income payable by Lessor by reason of the receipt of rentals hereunder), license fees, assessments, charges, fines or penalties (which taxes, license fees, assessments, charges, fines and penalties are hereinafter called "impositions") which may be imposed upon the Tamper or for the use or operation thereof or upon Lessor by reason of its ownership thereof and will keep at all times the Tamper free and clear of all impositions which might in any way affect the title of Lessor or result in a lien upon the Tamper; provided, however, that Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate

legal proceedings such impositions. If any impositions shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of an invoice therefor.

7. Payment in Case of Loss or Destruction of the Tamper.

In the event that the Tamper shall be or become worn out, lost, stolen, destroyed, or, in the opinion of Lessor or Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "casualty occurrences") during the term of this Lease, Lessee shall promptly notify Lessor with respect thereto and on the rental payment next succeeding such notice Lessee shall pay to Lessor an amount equal to the sum of (i) the rental due under Section 3 hereof on the date of such payment and (ii) an amount equal to the casualty value thereof as hereinafter defined as of the date of such payment in accordance with the schedule set forth below. The rental under this Lease shall cease to accrue as of the date of such payment. The term of this Lease shall terminate on the date of such payment and (except in the case of the loss, theft or complete destruction of the Tamper) the Lessor shall be entitled to recover possession of such Tamper.

The casualty value of the Tamper as of any rental payment date shall be the amount set forth in the following schedule opposite the number of such rental payment date:

<u>Payment Number</u>	<u>Casualty Value</u>	<u>Payment Number</u>	<u>Casualty Value</u>
1	\$52,044.91	11	\$34,335.38
2	50,834.27	12	32,010.98
3	49,482.27	13	26,968.36
4	47,987.16	14	24,478.73
5	46,344.83	15	21,917.53
6	44,599.74	16	19,270.47
7	42,750.38	17	16,547.98
8	40,792.68	18	13,745.80
9	38,724.56	19	10,863.88
10	36,573.92	20	11,048.25

8. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE TAMPER, AS TO MERCHANTABILITY OR FITNESS OF THE TAMPER FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE TAMPER, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney in fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor or Lessee, or both, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have as the purchaser of the Tamper. Lessee agrees that at its own cost and expense it will maintain and keep the Tamper in good order and repair, ordinary wear and tear excepted.

Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of the entering into or the performance of this Lease, the ownership of the Tamper, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of the Tamper or any accident in connection with the operation, use, condition, possession, storage or return of the Tamper resulting in damage to body or injury to or death of any person, except as otherwise provided in Section 17 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease.

9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an "event of default") shall occur:

A. default shall be made in payment of any part of the rental provided in Section 3 hereof and such default shall continue for 10 days;

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for 30 days after written notice from Lessor to Lessee specifying the default and demanding that the same be remedied;

C. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

D. any other proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations,

arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

Then, in any such case, Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Tamper

shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon the premises of Lessee or other premises where the Tamper may be and take possession of the Tamper and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Tamper for any purposes whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for the Tamper which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over (y) the then present value of the rentals which

Lessor reasonably estimates to be obtainable for the Tamper during such period, such present value to be computed in each case on a basis of a 7% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenants or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set

forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

10. Return of Tamper Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, Lessee shall forthwith deliver possession of the Tamper to Lessor at any reasonable place on the lines of Lessee as Lessor may direct.

11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Tamper or allow the Tamper to pass out of its possession or control, provided that Lessee may sublet the Tamper upon giving prior written notice thereof to Lessor. Lessee will not permit any liens to exist against the Tamper.

12. Return of Tamper upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, Lessee will, at the request of Lessor, deliver possession of the Tamper to Lessor at any reasonable place on the lines of Lessee as Lessor may direct.

13. Opinion of Counsel. The parties acknowledge that contemporaneous with the execution of this Lease Lessee has delivered to Lessor the written opinion of counsel for Lessee, addressed to Lessor, in scope and substance satisfactory to Lessor and its

counsel, to the effect that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of its states of incorporation, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its respective terms;

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by Lessee;

D. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which Lessee is a party or by which it may be bound.

14. Recording; Expenses. Prior to the delivery and acceptance of the Tamper, the Lessee will, without expense to the Lessor, cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, at its expense, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will re-file, re-register,

re-record or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of the Lessor, of its title to the Tamper, or for the purpose of carrying out the intention of this Lease.

15. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, an amount equal to 6% per annum of the overdue rentals or other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

16. Purchase Option. Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Lessor not less than 6 months prior to the end of the term of this Lease, elect to purchase the Tamper covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" thereof as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value of the Tamper where then located which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and

willing seller under no compulsion to sell. If on or before 4 months prior to the expiration of the term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Tamper, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as Lessor and Lessee may mutually agree upon, or failing such agreement, a panel of 3 independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first 2 so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, Lessor shall upon request of the Lessee execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Tamper is free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor) for the Tamper, and such other documents as may be required to release the Tamper from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

17. Expenses. Lessor and Lessee will each bear the respective fees and expenses, if any, of their respective counsel involved in the preparation and execution of this Lease.

18. Reports and Inspection. On or before May 15 in each year commencing with the year 1973, Lessee will furnish to Lessor a report regarding the condition, state of repair and location of the Tamper. Lessor shall have the right to inspect the Tamper and the records of Lessee pertaining to the Tamper.

19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to Lessor, at 50 South LaSalle Street,
Chicago, Illinois 60690;

(b) if to Lessee, at P.O. Box No. 880, Joliet,
Illinois 60434,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

20. Severability; Effect and Modification of Lease; Modification of Trust Agreement. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable

such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the Tamper and supersedes all other agreements, oral or written, with respect to the Tamper. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day first above written.

THE NORTHERN TRUST COMPANY,
as Lessor

(Corporate Seal)

By

Edward J. Dineen
Vice President

ATTEST:

Jeffrey H. Wessel
Assistant Secretary

Executed May 8, 1972 W

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY, as Lessee

(Corporate Seal)

By

W. K. Kretsch
Vice President - FINANCE

ATTEST:

L. J. Young
Assistant Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 8th day of May, 1972, before me personally appeared Wendell W. Tucker, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of The Northern Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority contained in its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ridgely J. Jackson
Notary Public

(Notarial Seal)

Ridgely J. Jackson, Notary Public
My Commission Expires January 24, 1976

STATE OF Pennsylvania)
) SS.
COUNTY OF Allegheny)

On this 4th day of May, 1972, before me personally appeared V. W. KRAETSCH, to me personally known, who, being by me duly sworn, says that he is a Vice President of the Elgin, Joliet and Eastern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy M. Tarr
Notary Public

(Notarial Seal)

DOROTHY M. TARR, Notary Public
Pittsburgh, Allegheny Co., Pa.
My Commission Expires
March 31, 1974